

(4)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:) Case No. 04-33303-C-7
SANDRA LOUISE EMANUEL,) Adversary No. 05-2236
Debtor(s).)

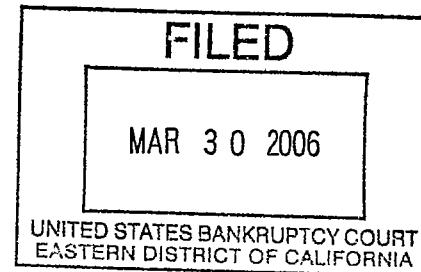
JOHN R. ROBERTS, Trustee,)

Plaintiff(s),)

v.)

SANDRA LOUISE EMANUEL,)

Defendant(s).)



FINDINGS OF FACT AND CONCLUSIONS OF LAW

Trial in this adversary proceeding was held on March 30, 2006. The question is whether to deny discharge on the basis that the trustee was not provided with information that he requested regarding the disbursement of approximately \$119,000 shortly before the filing of the bankruptcy case, which is the basis for denial of discharge under 11 U.S.C. § 727(a)(4)(D) if the withholding of information is both knowing and fraudulent.

21

JURISDICTION

The court has jurisdiction pursuant to 28 U.S.C. § 1334(b).

³ An objection to discharge is a core proceeding, which a

⁴ bankruptcy judge may hear and determine. 28 U.S.C. § 157(b).

FACTS

7 On October 5, 2004, Sandra Emanuel received \$128,089.15 from
8 the executor of the decedent's estate of her father Ralph Adrian
9 Emanuel, Jr., pursuant to a will executed in the State of South
10 Carolina. When she received the funds, Ms. Emanuel believed she
11 was under an obligation to her father to use the funds for the
12 benefit of her children and family. Between October 12 and 21,
13 2004, Ms. Emanuel withdrew a total of \$119,000, which sums she
14 used to pay certain debts, purchase approximately \$4,300 in
15 furniture for family members, repay expenses of her mother's
16 funeral, purchase clothing for her children, and pay debts of her
17 children. In addition, she transferred \$30,000 to her
18 stepfather.

19 Ms. Emanuel contacted the Law Offices of Russell William
20 Carlson and dealt with a person whose first name was "Michael".
21 "Michael" took the information preliminarily to prepare a
22 bankruptcy petition. She disclosed to "Michael" the existence of
23 the inheritance and how she had used the funds. "Michael" told
24 her not to include the transfers in her petition.

25 On November 10, 2004, Ms. Emanuel filed a chapter 7
26 voluntary petition and schedules and Statement of Financial
27 Affairs, none of which papers revealed the existence of an
28 inheritance or how it had been disbursed. On November 11, 2004,

1 Russell Carlson signed the petition. The bankruptcy case was
2 filed on November 18, 2004. Ms. Emanuel met Mr. Carlson for the
3 first time at the day of the first meeting of creditors. At the
4 meeting of creditors, she truthfully disclosed the existence of
5 the receipt of the inheritance.

6 The trustee requested information regarding the disbursement
7 of the funds. The information was not obtained until the trustee
8 had made numerous requests over a number of months. The trustee
9 filed this adversary proceeding on June 22, 2005, citing as
10 authority the withholding of information.

11

12 CONCLUSIONS OF LAW

13 A discharge can be denied pursuant to 11 U.S.C. § 727(a)(4)
14 if a debtor knowingly and fraudulently withholds information from
15 the trustee. The information in question was ultimately provided
16 to the trustee in what appears to have been several installments.
17 The circumstances, however, are such that the court is not
18 persuaded that the debtor intended to defraud the trustee in any
19 respect. The trustee would not have known about the existence of
20 the inheritance if debtor had not revealed it during the meeting
21 of creditors. And, under the circumstances, the court is not
22 persuaded as a matter of law or of fact that any withholding of
23 information that is attributable to the circumstances were
24 fraudulent. Accordingly, judgment will be entered in favor of
25 the defendant.

26

27

28

1 An appropriate judgment will issue.

2 Dated: March 30, 2006.

3

4

5 UNITED STATES BANKRUPTCY JUDGE

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

CERTIFICATE OF SERVICE

On the date indicated below, I served a true and correct copy(ies) of the attached document by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed and by depositing said envelope in the United States mail or by placing said copy(ies) into an interoffice delivery receptacle located in the Clerk's Office.

Sandra Louise Emanuel
9024 Amador Valley Ct
Sacramento, CA 95829

John R. Roberts
2744 Coloma St
Placerville, CA 95667

Dated: 3/31/04

Sue Miller
DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

CERTIFICATE OF MAILING

The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that a copy of the document to which this certificate is attached was mailed today to the following entities listed at the address shown on the attached list or shown below.

Office of the U.S. Trustee
5011 St. #7-500
Sacramento, CA 95814

DATED: 3/31/04

By: Sue Melt
Deputy Clerk

EDC 3-070 (New 4/21/00)